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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/710,815	11/10/2000	Edwin D. Ebner	7754-P	5777

21494 7590 06/02/2004

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EXAMINER

GANEY, STEVEN J

ART UNIT PAPER NUMBER

3752

DATE MAILED: 06/02/2004

*13*

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/710,815

Applicant(s)

EBNER, EDWIN D.

Examiner

Steven J. Ganey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 4-8, 11-15 and 20-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-14 and 24 is/are allowed.
- 6) ☒ Claim(s) 1, 4-8, 15, 20-23 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Receipt is acknowledged of the amendment filed on February 26, 2004, which has been fully considered in this action.

#### ***Specification***

2. The amendment filed June 15, 2001 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material, which is not supported by the original disclosure, is as follows: All references to controlling a fire or control burn and page 8, lines 15-18.

Applicant is required to cancel the new matter in the reply to this Office Action.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 4-8, 15, 20-23 and 25-28 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original specification did not disclose a method of controlling a fire, a method of providing a controlled fire, the step of

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reducing the exterior temperature of the blower, the step of propelling the exhaust gases away from the user or a device for starting a control burn.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 28 is rejected under 35 U.S.C. 102(b) as being anticipated by Colodner et al.

Colodner et al shows a device of the type for extinguishing fires comprising an engine and blower means 11/12; air output hose 32; at least one hose 23 for selectively diverting the exhaust gas into the air stream; the exhaust fed directly into the output hose at opening 33.

***Allowable Subject Matter***

7. Claims 11-14 and 24 allowed.

***Response to Arguments***

8. Applicant's arguments filed February 26, 2004 have been fully considered but they are not persuasive.

9. In response to applicant's arguments that the objections to the specification and rejection of the claims for new matter be withdrawn, note that none of the language directed to method of controlling a fire, a method of providing a controlled fire, the step of reducing the exterior

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temperature of the blower, the step of propelling the exhaust gases away from the user or a device for starting a control burn was in the specification as originally filed and was only added after filling an amendment to the specification and the claims. Therefore, it is still considered new matter. According to Webster's dictionary the word "extinguish" is defined as "to put out a fire". A "backfire" is defined as a fire started to extinguish an oncoming fire by clearing an area in its path. Therefore, as originally disclosed the invention was only directed to methods of extinguishing a fire and starting backfires to extinguish fires and to a device for extinguishing fires and starting backfires to extinguish fires. The scope of the claims as originally filed was directed to extinguishing a fire or starting a backfire. It is also clear from amended specification and claims, that applicant considers a backfire to be different from a control burn, since language such as method of providing a controlled or backfire, device of the type for extinguishing fires, starting backfires or control burn is used.

### *Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

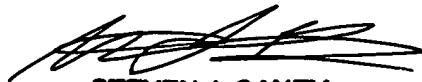
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (703) 308-2585. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar, can be reached on (703) 308-2087. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

sjg

6/1/04

  
**STEVEN J. GANEY**  
**PRIMARY EXAMINER**  
6/1/04